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Carman Contracting Company and Maurice Harris.
Case 14-CA-25582

November 16, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND
LIEBMAN

Upon a charge filed by the Charging Party on May 20, 1999, and an amended charge filed on August 25, 1999, the General Counsel of the National Labor Relations Board issued a complaint on August 30, 1999, against Carman Contracting Company, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charge, the amended charge, and the complaint, the Respondent failed to file an answer.

On October 7, 1999, the General Counsel filed a Motion for Summary Judgment with the Board. On October 8, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 22, 1999, notified the Respondent that unless an answer were received by September 29, 1999, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Alton, Illinois, has been engaged in the construction industry as a hauling and resurfacing contractor. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, provided services in

excess of \$50,000 for other enterprises, including Thiems Construction Company, Inc., located within the State of Illinois, which other enterprises in turn meet other than a solely indirect standard for the assertion of the Board's jurisdiction. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Chauffeurs, Teamsters and Helpers, Local Union No. 525, affiliated with the International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On about May 20, 1999, the Respondent's president and owner, William K. Carman, at the Respondent's facility, interrogated an employee regarding the employee's union activities. On about May 20, 1999, the Respondent discharged its employee Maurice Harris. The Respondent engaged in this conduct because the employee formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging employee Maurice Harris, we shall order the Respondent to offer the discriminatee full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Carman Construction Company, Alton, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating any employee regarding union support or union activities.

(b) Discharging or otherwise discriminating against any employee for supporting Chauffeurs, Teamsters and Helpers, Local Union No. 525, affiliated with the International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Maurice Harris full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Maurice Harris whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order expunge from its files any and all references to the unlawful discharge of Maurice Harris and, within 3 days thereafter, notify him in writing that this has been done.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of back-pay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Alton, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 20, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region at-

testing to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 16, 1999

John C. Truesdale, Chairman

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate you about your union support or activities.

WE WILL NOT discharge or otherwise discriminate against you for supporting Chauffeurs, Teamsters and Helpers, Local Union No. 525, affiliated with the International Brotherhood of Teamsters, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Maurice Harris full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Maurice Harris whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharge of Maurice Harris, and WE WILL within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

CARMAN CONSTRUCTION COMPANY

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."